IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2086 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AA MODI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1,
MS KRINA CALLA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/08/2007

ORAL JUDGMENT

In the present petition, the petitioner who is a Government servant, has challenged an order dated 31.7.95 passed by the Competent Authority as upheld

by the appellate order dated 7.1.97 passed by the Assistant Judge, Jamnagar in Civil Appeal No.121/95.

2. The petitioner, as a Government servant, was allotted a Government quarter at Jamnagar where he was employed. On the allegation that the petitioner had instead of occupying the quarter himself sublet the same, proceedings were initiated against him for vacating the quarter as well for recovery of penal rent. The Competent Authority under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972, after hearing the petitioner passed the impugned order dated 31.7.1995. By the said order, the Competent Authority directed the petitioner to pay market rent of Rs.800/- per month from 27.1.92 till he vacates the quarter. He was also directed to vacate the quarter within 30 days.

3. The appeal filed by the petitioner before the District Judge, Jamnagar was also rejected. In the appellate order, it is observed that the allegation that the petitioner had sub-let the official quarter is established. Statement of one Kokilaben who was occupying the said quarter was also recorded. The petitioner had also admitted that he was not occupying the quarter on account of the pregnancy of his wife. The Court, however, did not accept the said explanation of the petitioner noting that the period during which the petitioner was alleged to have sublet the quarter did not coincide with the evidence of pregnancy of his wife.

Considering all these aspects of the matter, the District Court, rejected the appeal of the petitioner.

4. Before this Court, the petitioner has challenged the said orders.

5. During the pendency of the petition, the petitioner was protected against eviction and recovery of market rent.

6. Having heard the learned advocates appearing for the parties, I find that in so far as the factual aspect of subletting of quarter is concerned, there was sufficient evidence on record to permit the authorities below to come to the conclusion that the petitioner had actually sublet the official quarter alloted to him. There is nothing on record to suggest that the said finding was perverse. The question of balancing the equity and moulding the relief, however, still survive.

7. From the record it would appear that the petitioner sublet the quarters some time in January 1992 and admittedly was not occupying the official quarter himself till the end of December 1993. For the said period, the authorities may recover the market rent as indicated in the impugned order. However, it is stated by the learned advocate for the petitioner that the petitioner has been occupying the said quarters thereafter. In view of this, the

direction for recovery of market rent till the petitioner vacates the quarter cannot be allowed to be upheld particularly when the petitioner continued to occupy the quarter under the protection of the District Court initially and thereafter of this Court.

8. The question of direction to the petitioner to vacate the quarter sill remains to be tackled. It is stated by the learned advocate for the petitioner that the petitioner has now been promoted and posted at Porbandar which is at a considerable distance from Jamnagar. Now that the petitioner himself is not residing at Jamnagar, in any case, he cannot indefinitely occupy the official quarter at Jamnagar. However, the learned advocate for the petitioner has cited personal difficulties and the education of his children as reason to occupy the quarter for at least some time.

9. Considering the totality of the facts and circumstances, the petition is disposed of by directing that :

(1)the respondents shall recover market rent from the petitioner for a period from 27.1.92 to December 1993. Any rent which is unpaid for the said period shall be recovered from the petitioner.

(2)The petitioner may seek for reasonable installments for paying up the dues, if any.

(3)Normal rent, if not paid by the petitioner for the remaining period for occupation of the quarter shall be recovered from him.

(4)The petitioner shall vacate the quarter within a period of six months and shall file an undertaking to that effect before the Government upon which he will be allowed to occupy the quarter upto 15th January 2008.

(5)It will be open for the petitioner to apply for allotment of quarter at the present place of posting which will be considered in accordance with rules.

With the above directions, the petition is disposed of. The orders under challenge stand modified accordingly. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)